

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

WILLIS PATTON,

*Plaintiff,*

v.

Case No. 2:04-cv-297  
HON. R. ALLAN EDGAR

DAVID DENBESTE, et. al.,

*Defendants.*

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**ORDER**

Defendant David DenBeste moves to dismiss the plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. In the alternative, defendant moves for summary judgment under Fed. R. Civ. P. 56. [Doc. No. 68].

Magistrate Judge Timothy P. Greeley has submitted a report and recommendation under 28 U.S.C. § 636(b)(1) and W.D. Mich. LCivR 72.1. [Doc. No. 81]. The parties have not timely filed any objections. After reviewing the record, the Court **ACCEPTS and ADOPTS** the report and recommendation as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b), and W.D. Mich. LCivR 72.3(b).

Accordingly, the motion by defendant DenBeste [Doc. No. 68] is **GRANTED IN PART and DENIED IN PART** as follows. The motion is **GRANTED** to the limited extent that the defendant moves to dismiss and moves for partial summary judgment on the plaintiff's claims alleging violations of the Equal Protection Clause of the Fourteenth Amendment and the Due Process Clause of the Fifth Amendment to the United States Constitution, and said claims are hereby **DISMISSED**

**WITH PREJUDICE.** The remainder of the defendant's motion is **DENIED.**

The only claims or causes of action that remain before this Court for trial and adjudication are the plaintiff's claims against the defendant DenBeste based on: (1) 42 U.S.C. § 1983 and the alleged violation of the plaintiff's right to be free from cruel and unusual punishment guaranteed by the Eighth Amendment to the United States Constitution; and (2) Michigan state law claims for assault and battery, and violation of the Michigan Constitution.

SO ORDERED.

Dated: August 17, 2006

/s/ R. Allan Edgar  
R. ALLAN EDGAR  
UNITED STATES DISTRICT JUDGE